

Ravinder Vs. State

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Court : Delhi

Decided On : Sep-15-2016

Judge : The Honourable Ms. Justice Pratibha Rani

Appeal No. : CRL.REV.P. No. 54 of 2015

Appellant : Ravinder

Respondent : State

Judgement :

Pratibha Rani, J.

1. On being convicted by the learned Trial Court for the offence punishable under Section 356/379 IPC and sentenced to undergo RI for two years for the offence punishable under Section 356 IPC and RI for three years for the offence punishable under Section 379 IPC and appeal also being dismissed by learned ASJ vide impugned order dated November 29, 2014, the revisionist herein has invoked the jurisdiction vested in this Court under Section 397 Cr PC r/w Section 401 Cr.P.C.

2. The case FIR No. 182/2012 was registered at PS Saket on the basis of statement made by Smt.Reeta the complainant against the petitioner/convict Ravinder for commission of offence punishable under Section 356/379/411 IPC. On the date of occurrence i.e. June 08, 2012 the complainant along with her

brothers and family was going to Itawa in a car. Her sister-in-law (bhabhi) was also in the same car with her child and when they reached at the traffic signal at Sector-3, Pushp Vihar, MB Road near Khanpur, Delhi at about 8:20 PM, she opened the left side window of the car as the child was crying. The petitioner herein put his hand inside the window of the car and snatched her jhumki on left ear. She cried and raised alarm and also started bleeding from the left ear. The petitioner was chased by her brothers (PW-2 and 3), however, jhumki could not be recovered from him. He was handed over to the police. The complainant as well the petitioner/convict herein both were sent for medical examination at All India Institute of Medical Sciences.

3. Since the complainant suspected that her jhumki had been swallowed by the petitioner, his X-ray abdomen was advised. X-ray disclosed foreign object present in abdomen. After repeated X-rays and keeping him under observation, ultimately, the jhumki (in pieces) was recovered when he passed stool on June 11, 2012. Some pieces of jhumki were recovered at 5:30 AM and remaining at 6:30 PM. After getting the jhumki cleaned, it was sealed and seized. During investigation it was also identified by the complainant during Test Identification Parade (TIP).

4. After the chargesheet was filed, the trial commenced.

5. During trial, the learned MM recorded the statement of the convict (accused at that time) under Section 294 Cr.P.C. that he was not disputing the genuineness of registration of FIR No. MLC and TIP proceedings. While convicting him the learned MM relied upon the aforesaid documents. An appeal bearing CrI.A. No.30/2013 was preferred before learned Sessions Judge, Saket (South) and finding the procedure followed by the learned MM for invoking the provision under Section 294 Cr.P.C. to be erroneous, the case was remanded to learned MM with the direction to secure the presence of the witnesses to prove the above documents as per law and in case the learned MM was inclined to follow the procedure under Section 294 Cr.P.C. then adhere to the requirements of law.

6. After the case was remanded, learned Trial Court examined three more witnesses including PW-6 Ct. Prem Chand who was part of investigation and witness to the seizure memo of the jhumki which was recovered from the stool

passed on June 11, 2013 by the convict during the period the petitioner/convict was kept under observation.

7. The TIP proceedings in respect of the jhumki were proved by PW-7 Sh.Rajender Singh, Learned MM. He deposed that the case property was correctly identified by the complainant and this fact was recorded by him in the TIP proceedings Ex.PW-7/A.

8. PW-8 Dr.Shrey Modi, Senior Resident, Emergency AIIMS, New Delhi was deputed by the Medical Superintendent to identify the handwriting and signature of Dr.Shailender Gautam, Dr.Nupur and Dr.Santosh Kumar Singh. PW-8 Dr.Shrey Modi identified their signatures on the MLC of the convict Ex.PW-8/A which recorded the presence of foreign object in his abdomen. He also proved second MLC Ex.PW-8/B prepared by Dr.Santosh Kumar Singh giving detailed report and his observations Ex.PW-8/C as well the X-ray reports recording the presence of foreign object in the abdomen of the petitioner/convict herein.

9. On behalf of petitioner/convict, the impugned judgment has been challenged mainly on the following grounds:

(i) The MLC and the X-ray and even the First Information Report had not been proved and exhibited during his trial.

(ii) All the X-ray reports vary in respect of the image of foreign object in the abdomen.

(iii) The case property i.e. Jhumki was not produced during trial.

(iv) In the absence of recovery being proved by the prosecution, both the Courts below committed serious error in convicting him as above.

10. Before dealing with the contention raised on behalf of the petitioner/convict, it is necessary to record that in the garb of this revision petition in fact an attempt is being made by the convict to equate the revisional power vested in this Court with that of Appellate Court. The revision cannot be treated as second appeal.

11. The revisional jurisdiction of this Court being a limited one, reappraisal of the evidence, at the hands of this Court, would be permissible only when the impugned judgments rendered by the learned Courts below, are found to be suffering from glaring illegality or perversity which would tantamount to gross miscarriage of justice. In the case reported as 1999(2) SCC 452 State of Kerala vs. Puttaman Illath Jathayedan Namboodiri it was held that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate Court nor can it be treated even as a second appellate jurisdiction.

12. The contentions raised on behalf of the petitioner/convict have already been dealt with at length not only by the learned Trial Court but also by the Appellate Court. There is concurrent finding of fact by the two Courts below about the petitioner/convict being caught at the spot after he snatched the jhumki from the left ear of the complainant PW-1 Smt.Reeta. The factum of presence of jhumki in his abdomen and its recovery in pieces on June 11, 2012 at 5.30 AM and 6.30 PM when he passed stool, has been proved not only from his MLC and X-reports but also from the testimony of PW-5 ASI Suresh Chand and PW-6 Ct.Prem Chand who are witnesses to the recovery. The pieces of jhumki recovered from the stool of the petitioner/convict were identified by PW-1 Smt.Reeta before the learned MM (PW-7) and this factum was recorded in the TIP proceedings Ex.PW7/A. PW-6 Dr.Shrey Modi, who has identified the handwriting and signatures of Dr.Shailender Gautam and Dr.Nupur on the X-ray Report Ex.PW8/A, MLC Ex.PW8/B respectively and of Dr.Santosh Kumar Singh who has given observation Ex.PW8/C on the MLC Ex.PW8/B, has stated that he had not only done MBBS from AIIMS but had also worked there as Junior Resident for three years and thereafter as Senior Resident hence was familiar with the handwriting and signatures of the above doctors.

13. The testimony of PW-5 ASI Suresh Chand the investigating officer on the issue of apprehension of the petitioner/convict from the spot and he being taken to AIIMS and confirmation of presence of foreign object in his abdomen through X-ray report could not be assailed during his cross examination. On the issue of

recovery of jhumki, the relevant portion of testimony of PW-5 ASI Surender Chand is to the following effect:-

Thereafter the accused was taken to the AIIMS for his medical examination where he was kept under observation for the purpose of taking X-ray as the complainant had raised doubt that either the accused had thrown away the said earring somewhere on the spot or had swallowed the same. During the X-ray it was detected that one piece of earring therein inside his body which he passed through his stool on 11.06.2012 at 5.30 AM and another piece of earring was passed by him through his stool at 6.30 PM which the accused handed over the same after getting it washed by the water to me and I had seized both the pieces of earring after making two separate pullanda and sealed the same with the seal of SCV vide seizure memo Ex.PW5/A and Ex.PW5/B .

14. The above testimony of PW-5 has remained unchallenged. Similarly PW-6 Ct.Prem Chand who joined the investigation with the Investigating Officer (PW-5 ASI Suresh Chand) has also deposed to the above effect and he has also not been cross examined by the petitioner/convict on the recovery of jhumki from the stool of the petitioner/convict.

15. When the petitioner/convict was examined under Section 313 Cr PC on November 19, 2012 the Question Nos.2 and 3 and the answer given by him are extracted as under:

Q.2 It is in evidence against you in the evidence that statement of complainant was recorded which is Ex.PW1/A. You were arrested vide memo PW1/B, your personal search was conducted vide memo PW1/C. What have you to say? Ans. It is correct that I was arrested.

Q.3 It is in evidence against you in the evidence that you were taken to the AIIMS hospital and your X-ray was conducted as complainant has aroused doubt that you have swallowed the earrings in your X-ray was conducted it was deduced (sic. Detected) that one piece of earring was in your body which you passed through your stool on 12.06.2012 at 5.30 AM and another piece of earring was passed through your stool at 6.30 PM and handed over to the IO after washing it,

the same is exhibited PW5/A and PW5/B which sealed with the seal of SCV. TIP was conducted and Smt.Reeta correctly identified her gold earrings. Ans. It is correct.

16. However, after the case was remanded by the learned Appellate Court and statement of three other witnesses i.e. PW-6 to PW-8 were recorded, when that evidence was put to him under Section 313 Cr PC on 19.12.2013, for the first time he disputed this fact but without leading any evidence in his defence. The relevant question No.3 put to the petitioner/convict and the answer given by him is extracted as under:

Q.3 It is in evidence against you that PW-8 stated that on 09.06.2012, Dr.Sailendra Gautam examined you and they gave opinion after going through the X-ray report that a foreign object present in the abdomen and doctor gave his report Ex.PW8/A. On the same day, Dr.Nupur examined you after getting X-ray again and the MLC is Ex.PW8/B bears the signature of Dr.Nupur. On 11.06.2012, Dr. Santosh had given his detailed report in the MLC Ex.PW8/B mentioning the detailed observations made by him. His observations is Ex.PW8/C. What you have to say? Ans. It is a matter of record.

17. In the instant case the complainant.PW-1 Smt.Reeta proved that when she was going in car along with her brothers and family, at the traffic signal when the car stopped and she pulled down the window pane all of a sudden the convict came near her and snatched jhumki from her left ear. Her two brothers immediately chased him. Her two brothers have also proved that they chased and caught the petitioner/convict but jhumki could not be recovered from him. The testimony of PW-1 to PW-3 proved the incident and apprehension of the petitioner/convict as well arrival of the police at the spot and handing over of the petitioner/convict to the police. Medical examination of the complainant as well of the petitioner/convict at AIIMS vide their respective MLCs, X-ray reports of the petitioner/convict showing the presence of the foreign object in his abdomen and its location has been noted from time to time on the MLCs of the petitioner/convict. Even the Xray plates are there confirming the presence of jhumki noted as foreign object in the abdomen of the petitioner/convict. The convict did not dispute that he

was taken to AIIMS and X-rays were taken repeatedly to ascertain the presence of foreign object (jhumki which was swallowed). As per the statement of PW-5 ASI Suresh Chand and PW-6 Ct. Prem Chand as well the from seizure memo prepared, when the pieces of jhumki were recovered from the stool of the petitioner convict, the same were cleaned and seized. Identification of the jhumki by the complainant PW-1 Smt. Reeta before learned MM was also proved. When PW-1 appeared as a witness, identity of the case property was not disputed by the petitioner/convict. Case property i.e. jhumki was released on superdari vide order dated June 28, 2012 giving direction to the IO to keep the photograph and soft copy of the earring and to file along with the final report which was complied with. It may be recorded here that after the case was remanded, the complainant was re-summoned but she informed that after the disposal of the case, she had sold that jhumki.

18. It is a case where not only the convict was apprehended at the spot, even the jhumki was recovered from his stool on being confirmed through X-ray that it was lying in his abdomen. Further examination of the convict under Section 313 Cr.P.C. was in respect of the evidence adduced in compliance of direction dated April 01, 2013 issued by the Appellate Court in Crl.A. No.30/2013.

19. Both the courts below have examined the entire evidence in correct legal perspective. Concurrent finding of the fact of recovery of jhumki which was in the abdomen of the petitioner/convict and passed through stool and its identification during TIP by the complainant PW-1 Smt.Reeta, the petitioner/convict not disputing the identity of the case property at any stage of the trial, could lead to a finding of his conviction under Section 356/379 IPC as returned by the Trial Court and confirmed by the Appellate Court.

20. The contentions raised on behalf of the petitioner/convict being contrary to the evidence available on record and referred to above, are liable to be rejected. The finding of fact recorded by the two Courts below is on the basis of material on record duly proved by the prosecution.

21. Since no case for interference in the revisional jurisdiction being made out, the revision petition is dismissed.

22. LCR be sent back along with copy of the order.

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